IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 806 OF 2002

Maruti Alias Diagambar]
Janardan Poyarekar]
residing at Ovaliy, Bhutgaluwadi]
Dist : Sindhudurg (now confined]
at Kolhapur Central Prison]
Kolhapur, Kolhapur 416007] ..Appellant
(Ori. Accused)

versus

State of Maharashtra ..Respondents

Mr. N. N. Gawankar with Mr. Arfan Sait for the Appellant / Original Accused.

Mrs. M. M. Deshmukh, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
Smt. R. S. DALVI,JJ.

DATE : 22ND NOVEMBER, 2006

ORAL ORDER :

1. Heard counsel for the Appellant - Accused and the learned APP for the State.

2. Appellant - accused is convicted and sentenced to suffer imprisonment for life and to pay fine of Rs.500/- in default to suffer R. I. for 15 days.

3. The charge against the Appellant - accused is that he had committed the murder of his father by means of a stick. The cause for the assault was very minor. Appellant - accused had removed idols of Lord Ganesh and Hanuman from his house and kept them under a tree in his court-yard. Father - deceased went with stick to question the appellant - accused about the same and gave stick blow on the person of the accused that resulted in appellant - accused snatching the stick from his father and giving four blows as per the post mortem report. Those blows are:

> CLW of 5 cm x 3 cm x 2 cm just 5 cm. superior to Right eye-brow in oblique direction.
>
> 3 cm superior to middle of left eyebrow. CLS of size 2 cm x 1 cm x 1 cm skin deep.
>
> Just superior to lateral end of left eyebrow CLW of 2 cm x 1 cm and 1 cm. skin deep.
>
> Right ear Lobule subluxed wound.

The cause of death given by doctor in the post-mortem report is "Shock due to Head Injury due to violent & frequent blows by hard and blunt object."

4. Stick that was seized on the spot is of length of 38 inches i.e. 3 feet and 2 inches with 5" circumference in middle and it is tapering to one end. It is blood stained.

5. Counsel for the appellant - accused also pointed out that right from stage one the accused has admitted his guilt. He has given his statement to the Magistrate under Section 164 of the Criminal Procedure Code that the accused had attempted to assault his father. Before that he had pleaded guilty before the court of the charges levelled against him. In his statement under Section 313 of the Criminal Procedure Code he stated that all the witnesses are giving truthful version and he has no defence.

6. Counsel for the appellant - accused, therefore, in this background urged only one point,

i.e. from the circumstances proved on record and even admitted by the accused, it could not be said that it was a case under Section 302 of I.P.C. but this is a case under Section 304-Part II because admittedly the accused had no intention to kill his father, but he may have knowledge.

7. We have given our anxious consideration to the submissions made. Learned APP also could not point out anything from the record from which conviction of the accused under Section 302 could be justified. Therefore, looking to the facts and circumstances, nature of injury, cause of the quarrel and the attending circumstances, this appeal is required to be partly allowed. Conviction of the appellant - accused under Section 302 of IPC is required to be altered to Section 304-Part II of IPC.

8. So far as sentence is concerned, sentence i.e. prescribed under Section 304-Part II is imprisonment of either description for a term which may extend to 10 years or with fine or with both.

9. Counsel for the appellant - accused pointed

out that the accused is in jail since last six years and therefore, looking to the conduct of the accused, as mentioned above, sentence of six years, already undergone by the accused is proper, in the circumstances. We find justification in this submission. Hence, Appeal is partly allowed. Accused is acquitted of the offence under section 302 of the IPC. Howver, he is convicted under Section 304-Part II of IPC and is sentenced to suffer R.I. for six years. If that period is already undergone, the appellant - accused be released from jail if he is not required in any other case. Articles 10 and 11 be given back to persons belonging to the family of the deceased. R & P. be sent back.

(D.G. DESHPANDE, J.)

(Smt. R.S. DALVI, J.)